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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/065,120
Filing Date: September 18, 2002
Appellant(s): HARRIS, SCOTT C.

Scott Harris
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/23/05 appealing from the Office action mailed 3/4/05 and 5/17/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

Art Unit: 3662

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

Additionally, the amendment after final rejection filed on 11/23/05 has been entered; claim 35 is cancelled.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is substantially correct. Note on page 3, the second from bottom line, the language "Page 9" should read "Claim 9".

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 9-13, 15, 17-20 and 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zellner et al (6,675,017).

Zellner et al teach a wireless handheld device 200 operating over a wireless network 210, (1) wherein the handheld device is exemplified as a cellular telephone (2:5-15), (2) wherein the wireless handheld device includes a position detection module 220 preferably in the form of a GPS receiver (5:60-

Art Unit: 3662

62), such that position may be reported to a remote location for emergency purposes or for services, (3) wherein the device includes a user interface 202, and (4) wherein the handheld device includes a location block device processor 204. The location block device processor 204 reads on the claimed "override control" because in the embodiment of the location being determined in the handheld device, (1) it is actuated by the user to enhance privacy (2:51-60 and 3:14-38), (2) it is manually actuated in response to the user using the user interface (6:1-15, 6:23-29 and 7:54-60), and (3) it can either alternatively (3a) disable a location system and substitute dummy information or (3b) receive location information and substitute dummy information (6:18-30) such that wireless communication from the handheld device to the network continues to operate, thus providing evidence of the continued operation of the wireless handheld device.

Zellner et al differ from some of the variously claimed embodiments while meeting the scope of other embodiments. For example, while Zellner et al disclose a user interface 202 that prompts the user to enter commands wherein the interface may include menu selections, key sequences, and graphical user interfaces, thus teaching a manual actuating mechanism (claim 1), the use of "a single button which is pressed to activate a position privacy control" (claim 9) or "override control . . . operating in response to a manual press of a single button on the portable telephone" (claim 10), or "a manual button . . . that is pressed once to enhance security" (claim 21) are not specifically disclosed.

However, in view of the teachings of Zellner et al to manually activate/deactivate privacy control via an user interface, and an user interface that is exemplified by menu selections, key sequences or graphical user interfaces, it would have been obvious to the skilled artisan at the time the invention was made to utilize (1) a menu selection of a "yes/no" or "activate/deactivate security" as the single actuatable selection or (2) a "graphical user interface" of a single graphical element on the portable unit graphical display to provide such since each is clearly within the scope of that which is taught by the prior art reference of a menu selection or a graphical user interface and the use of a single button/sequence of buttons is clearly within the skill of the artisan as well as the scope of the art. As the wireless handheld device is in the form of a conventional cellular telephone/PDA, which include a keyboard/display, the entry by pressing a keyboard element or selecting and pressing a stylus to the screen obviously meet the

Art Unit: 3662

manual actuation and pressing limitations of the claims as conventional cellular phones/PDAs operate with keyboard elements that provide shortcuts to various functions; e.g. the pressing and holding of "*" on a conventional phone enables "manner mode".

Claims 1, 2, 9-13, 15, 17-20 and 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson et al (5,731,785) in view of Seiple et al (6,222,484).

Lemelson et al teach a remote security system including a portable remote security location device 10 (Figure 2) comprising a wireless telephone 24 (Figure 3), operating for example with the cellular network of Iridium (4:24-25) for reporting position information of the portable device (3:55-57) determined from a location receiver 34 receiving GPS signals (5:46-50), and an user interface 25/26/27 for disabling transmission of the location information without disabling operation of the portable device via the use of an inhibiting PIN actuated by the user (5:7-25), thus effectively equating to the claimed override control limitation. Lemelson et al recognize the desire for privacy in a combined communication device/location device and concomitantly means for providing the security by user actuation (4:44-5:25).

Lemelson et al differ from the claimed subject matter of the embodiment set forth in claim 1 since the override control does not prevent the determination of position but merely prevents the transmission of position, and differ from the subject matter of the embodiments set forth in claims 9, 10 and 20 since the override control is not specified as a single button being manually pressed but rather teaches entry of a PIN number.

Seiple et al teach a portable unit 10 (Figure 2A) housing a GPS receiver 20/26 for determining position of the portable unit and a two-way communication device 21 for communicating and providing tracking between the portable device and a remote base device, thus relating to analogous art. Moreover, Seiple et al teach the use of power management in the portable device to conserve power and allow the device to be made small, via the reduction in the size of the power supply. The power

Art Unit: 3662

management includes placing the GPS receiver IC and the GPS processor IC in a standby or sleep mode between the times that signals are received from the GPS satellites to obtain a fix (7:37-58).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lemelson et al by incorporating the power management control of Seiple et al so as to conserve power and allow reduction in the size of the portable remote security location device as suggested by Seiple et al; the use of the power management control would place the GPS receiver of Lemelson et al into a power saving standby/sleep mode between the times when GPS signals are required for a position fix for position reporting. Since Lemelson et al teach not providing the position information to the monitoring station upon entry of the inhibiting code and the purpose of the position information is for remote monitoring of the portable device, there is clearly no need for the position to be determined upon the user entering the inhibiting mode. In view of the teachings of Seiple et al, if the position fix is not required, the position receiver/processor may be placed into the standby/sleep mode in order to conserve power.

Furthermore, it would have been obvious to the skilled artisan to utilize a single dedicated button in view of Lemeleson et al who clearly suggest entry of an inhibiting number via the keyboard; there is nothing to negate the use of a single number to provide the activation of a function on the interface of a portable communication device, particularly in light of the fact that, conventionally, various buttons are given multiple functions so as to not crowd the interface. For example, pressing down and holding the “*” button on a conventional cell phone activates “Manner mode,” or pressing down on a single number activates “speed dialing”.

(10) Response to Argument

Arguments with respect to Zellner et al

Firstly, Appellant argues that Zellner et al fail to meet the claim limitations of preventing the position detection module from determining position since Zellner et al “removes the location information” which Appellant alleges requires that the location information must have been produced in order to be removed. Secondly, Appellant argues that Zellner et al fail to meet the claim limitations of an override control that is a single button that is pressed to activate privacy control.

The Appellant's argument that Zellner et al do not prevent the position detection module from determining position is contrary to the teachings of Zellner et al. Specifically, Zellner et al state "processors 204 and 206 can disable a location system and substitute dummy information or can receive location information and substitute dummy information" (6:22-25) as well as the further teaching "to block location information, location block device processor 204 either disables handheld location system 220 or substitutes dummy information for the location information" (6:26-28); this clearly indicates that the location system in the handheld device can be disabled or that the position information may be determined but not sent. Thus, Appellant's arguments are not commensurate with the complete teachings of Zellner et al since Zellner et al clearly teach the disabling of the handheld location system as well as the reporting of dummy information. Moreover, only the embodiment of independent claim 1 (as well as dependent claims 11 and 22) sets forth an override control that prevents the determination of position; each of the remaining independent claims merely set forth preventing the reporting of position information. The appellant's arguments are therefore not convincing since Zellner et al perform both types of operation including disabling the location system and prevention of the transmission of location indicative information.

The Appellant's argument that the use of a single button that is pressed to activate position privacy control is not suggested by Zellner et al since all of Zellner et al's blocking means are "much more complicated than the single button" is not persuasive. Firstly, whether the use of a menu selection or a graphical interface is used by Zellner et al, each obviously consists of pressing a single button, be the enter key of a menu selection, selection of yes/no prompt, or the icon of a graphical interface. Moreover, the use of a single graphical icon of a graphical interface is clearly obvious to the skilled artisan as the purpose of graphical interfaces is to provide easy to operate graphical denotations of operations. Lastly, the appellant's argument that the Zellner et al's interfaces are "much more complicated than the single button" of the claimed subject matter is not persuasive since the teachings of Zellner et al of a sequence could simply be two keys for example "*8" which for a non-emergency function is not "much more complicated than pressing a single button. Moreover, it is not seen how the use of a graphical icon of a graphical interface is "much more complicated". Therefore, the Appellant's argument that the pressing of

Art Unit: 3662

a single button is not shown by Zellner et al and is therefore novel over the prior art is not persuasive because of the obviousness of such is shown above to be within the skill of the artisan.

Arguments with respect to Lemelson et al in view of Seiple et al

Arguments with respect to the “improper combination” of references

Appellant argues that the combination is improper and would not be made by someone of ordinary skill in the art since anything that would defeat obtaining position information would defeat Lemelson from tracking the object since the owner must be able to track the object when needed. Appellant directs all arguments to one of the embodiments set forth by Lemelson et al, that of tracking a stolen object by someone remote from the object.

Firstly, only claim 1 (dependent claims 11 and 22) defines an override control that prevents the position detection module from determining position. Each of claims 9, 10, and 20 set forth an override control that prevents the position detection module from reporting said information indicative of position, which is what is shown by Lemelson et al. Thus, the distinction between the subject matter of claim 1 and Lemelson et al lies in the prevention of operation of the positioning module. The distinction between Lemelson et al and the subject matter of claims 9, 10 and 20 lies in the use of a single button that is manually pressed to activate/deactivate security.

Regarding the combination, Appellant argues a combination not set forth by the rejection; the combination set forth by the Office merely integrates the teachings of power conservation as taught by Seiple et al into the portable location device of Lemelson et al. Each of the references are directed to portable devices integrating location determination and communication processes, thus the two references are clearly within the scope of one another. Contrary to the Appellant's belief, Seiple et al disclose the placement of the location determining means, i.e. the GPS receiver, into a mode which is described by the terms “dormant”, “sleep” or “standby” to provide power conservation. Figures 3.1 (101), 3.3 (301) and 3.5 (501) exemplify the turning off of the GPS subsystem for the various conditions. Since Lemelson et al disclose an application mode wherein user privacy is desired by prohibiting the transmission of location information and thereby not allow monitoring of the location of the user, the non-provision of location information does not thwart, destroy, nor defeat the intent of Lemelson et al;

Art Unit: 3662

Lemelson et al specifically teach prohibiting someone else from knowing the location of the user by prohibiting the reporting of location information in a system that uses the location information merely for location reporting. The Appellant's reliance on a separate embodiment wherein a user is tracking his vehicle does not negate the additional embodiments of Lemelson et al, and the Appellant's argument is therefore not commensurate in scope with the complete teachings of Lemelson et al. Furthermore, the Appellant's allegation that it would make no sense to operate Seiple et al in a way that turned off the GPS is directly contrary to the teachings of Seiple et al who specifically disclose such as set forth above for the purposes of power conservation in a portable device. Neither of the Appellant's arguments, directed to the non-operability of the proposed combination, are persuasive nor are they correct.

Appellant argues that Seiple et al must have position and if it did not, it would not be useable for its intended use as an emergency device. However, firstly, the combination set forth by the Office is directed to the power conservation/management features in the portable integrated communication/location device of Seiple et al. The power conservation features clearly disclose placing the GPS receiver into a dormant/sleep/standby mode wherein the GPS subsystem is turned off when the position fix is not needed or between position fixes, see quoted passages above. Secondly, Seiple et al is directed to an emergency device yet still disclose the use of power conservation management wherein power to the GPS subsystem is turned off; Appellant's argument that Seiple et al is not operable if GPS is turned off is therefore directly contradictory to the teachings set forth by Seiple et al.

As a side note, the updating of information including the ephemeris/almanac data allows for the fast acquisition of a position fix when required coming out of a dormant mode. Thus, Seiple et al is not non-operable because it turns off the GPS subsystem as alleged by the Appellant. If an emergency occurred, fast acquisition of GPS signals would be possible since the time required for reading the navigation message transmitted by the satellites comprising the satellite ephemeris and almanac data is eliminated. The emergency function of Seiple et al is not what is to be gleaned from the Seiple et al reference, rather it is the teachings in a portable integrated location/communication device to provide power management so as to conserve power, a much-desired feature for a portable device. Thus, the

Art Unit: 3662

Appellant's argument that Seiple et al must determine position at all times is not germane to the combination nor is it an accurate statement of the teachings of Seiple et al.

Arguments with respect to the failure of the proposed combination to teach the claim limitations

Appellant also argues that even if the combination were made, the claim limitations are not met by the prior art combination. For example, the limitation in claim 1 for preventing position detection is not shown; the single button for privacy activation of claim 9 is not shown; the use of a portable telephone as well as the single press of a button of claim 10 is not shown; and, the manual button of claim 20 is not shown.

Regarding the prevention of position detection with respect to claim 1, the cited combination of references suggest to the skilled artisan that to reduce power consumption of the portable device, the position detection module, i.e. the GPS receiver, may be put into a sleep or standby mode of operation, when position information is not required. In a sleep or standby mode of operation, a GPS receiver does not determine position. Each of Lemelson et al and Seiple et al are directed to portable devices and thus clearly desire reduction of power consumption to prolong the life of the battery/power supply. Lemelson et al teach an embodiment wherein the portable device is associated with a user wherein "certain situations will require privacy where an actual person . . . will not want arbitrary polling and determination of location" (4:43-47); and, "in the case of a portable location device carried by a person, it may not be desirable to permit arbitrary access to the person's location" (4:57-59). Thus, if the portable device is used for tracking and the actual person does not want a third party to have knowledge of the person's location, the person can deny access of the person's location thereto. Concomitantly, since the position is not to be provided for purposes of tracking due to user selection, there is no need to determine the position. Since it is known to place a GPS receiver into a dormant/sleep/standby operation when operation is not required in order to conserve power, it clearly is within the scope of the skilled artisan to place the GPS receiver of Lemelson et al into a dormant/sleep/standby mode to conserve power since there is no need for Lemelson et al to determine a position fix to report. The Appellant's allegation that a PIN must be entered remotely is not commensurate in scope with the teachings of Lemelson et al who

Art Unit: 3662

teach, "having a PIN entered directly at the portable unit 10" (4:57-62) and "PIN use from remote only" (5:7-25) wherein the terminology "remote" is in reference to the portable "Remote Security Location Device 10."

Regarding the single button for privacy activation of claims 9, 10 and 20, appellant's argument that a single button would not be useable in Lemelson et al lacks merit. Lemelson et al clearly envision an embodiment wherein the portable device is associated with an actual person who desires not to be tracked for privacy purposes (4:43-59). Appellant's stressing of the use only as a security device for tracking a lost or stolen object is not commensurate in scope with the complete teachings of Lemelson et al. There is nothing in Lemelson et al that would go against the teachings therein via the use of a single button, particularly in the case wherein the person desires privacy from being tracked. As noted previously, the activation of features on a conventional cellular phone clearly encompass the manual pressing of a single button, for example, "Manner mode" or "speed dial" and are generally well-known to the skilled artisan. Appellant's argument that there is nothing in Lemelson et al that teach use for position privacy control is again directly contradictory to the teachings of Lemelson et al, see (4:43-47 and 5:7-9).

Regarding the device including a portable telephone of claim 10, appellant's argument that Lemelson et al in view of Seiple et al do not teach such use is not persuasive. Lemelson et al clearly teach a portable device that includes a wireless transceiver for communicating with a base station via a network of satellites such as the constellation known as Iridium, which is a known cellular network. There is nothing to distinguish the claimed "cellular telephone" from the wireless communication means for providing 2-way wireless communication in a cellular network such as Iridium as specified in Lemelson et al.

In summary, the combination of Lemelson et al in view of Seiple et al is deemed proper and suggested by the prior art references. The proposed combination does not defeat the purpose and intent of either of the references particularly in light of the fact that the teachings to be gleaned from Seiple et al are merely the use of power conservation management in a portable integrated location/communication device. The argued limitation of "preventing determination of position" is shown by the combined references since there would be no requirement for position determination in the privacy mode of

Art Unit: 3662

Lemelson since the position is used strictly for position reporting, and for privacy reasons Lemelson et al teach prohibiting reporting of the position information; Seiple et al clearly suggest placing the GPS subsystem in a dormant/standby/sleep mode when position is not required, such as would exist in the privacy mode, to conserve power in the portable device. The argued limitations regarding the single button activation of the privacy mode are deemed to be obvious to the skilled artisan in light of the fact that Lemelson et al suggest manual direct entry via a keyboard of the portable device 10 for its privacy mode/controlled access using a PIN and in view of the conventionality of the use of keyboard elements for providing multiple functions such as "manner mode" or "speed dial". The argued limitation regarding a "cellular telephone" is met by Lemelson et al who show a wireless communication transceiver 24 operating in a network which is exemplified as "Iridium", which is a known cellular network.

(11) Related Proceeding(s) Appendix

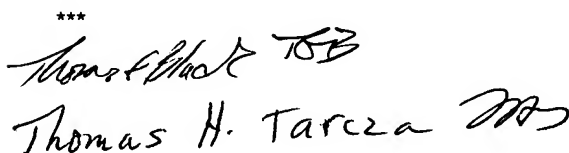
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

gcj


Conferees:


Thomas H. Tarcea